IN THE COURT OF COMMON PLEAS FOR THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

HUBERT NELSON,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No.: CPU4-21-000628
	)	
ERICK JONES, C/O CHURCHMAN'S AUTO SERVICE	)	
	)	
	)	
Plaintiff/Appellee,	)	
	)	
v.	)	

Submitted: October 13, 2021
Decided: November 29, 2021

Hubert Nelson
315 Sheridan Drive
New Castle, DE 19720
Self-Represented Plaintiff

Erick Jones
Churchman's Auto Service
202 East 6th Street
New Castle, DE 19720
Self-Represented Defendant

FINAL DECISION AND ORDER

Plaintiff Hubert Nelson filed this action on March 5, 2021. In his Complaint, Plaintiff alleges that he drove his pickup truck to Defendant's auto repair shop on Friday, November 20, 2020, to be serviced and that he parked where Defendant had directed him to. Plaintiff alleges that he handed his keys to Defendant after discussing the necessary repairs. Plaintiff then alleges that on Monday, November 23, 2020, Defendant called him to tell him that the truck had been stolen. In the Complaint, Plaintiff sought relief in the amount of $8,500.00 for the value of the truck and the tools that were in the truck at the time.

Defendant filed an Answer on March 23, 2021, in which he admitted that Plaintiff had left

the truck at his repair shop on November 20, 2020, and that when he returned to the shop on November 23, 2020, the truck was no longer there. However, Defendant denies that he provided any assurances to Plaintiff that he would protect his truck and alleges that Plaintiff was aware that he had parked his truck in an open access parking lot. On April 30, 2021, Defendant filed an Amendment to his Answer in which he stated that he found it strange that Plaintiff did not remove the tools from his truck, given that it would take a few weeks to make the repairs on Plaintiff's truck.

Trial was held on October 13, 2021. Plaintiff and Defendant appeared self-represented. Aside from the Plaintiff and the Defendant, there were no other witnesses. The Court heard testimony from both parties and received documents into evidence.[1] The Plaintiff introduced into evidence a copy of the police report made when Defendant reported the truck stolen and a list of the tools that were in Plaintiff's truck when it was stolen. At the conclusion of trial, the Court reserved decision.

FACTS

The parties do not dispute that the truck was delivered to Defendant's auto repair shop on Friday, November 20, 2020, nor that the truck was no longer present at the repair shop when Defendant returned on Monday, November 23, 2020. Based on the testimony and evidence presented at trial, the Court considered the following facts in rendering this decision.

Plaintiff contacted Defendant to get the clutch on his truck replaced. On Wednesday, November 18, 2020, the parties discussed what type of repairs the truck would need. Plaintiff told Defendant that he needed the clutch in his truck to be replaced. Defendant told Plaintiff that he did not have time to check on the truck that day but told him to drop off the truck at the repair shop

[1] Plaintiff's Exhibit 1 and 2 were received into evidence.

on Friday, November 20, 2020, for Defendant to inspect it and determine what repairs it would need. Plaintiff dropped off his truck on November 20, 2020, as had been discussed by the parties. However, Defendant was unable to work on Plaintiff's truck that day as there were already other cars on the lot that he was working on.

Plaintiff gave his keys to Defendant for Defendant to work on the truck. Plaintiff left the truck parked on the open access parking lot in the strip mall where Defendant's shop is located. Defendant did not attempt to move the truck because it had a bad clutch, and he would only have one chance to move it.

When Defendant arrived back in his shop on November 23, 2020, Defendant noticed that Plaintiff's truck was gone. Defendant called Plaintiff to ask him if he had taken his truck back, but Plaintiff stated that he had not. Defendant then informed Plaintiff that his truck had been stolen and called the police to file a report.

In addition to the value of the truck, Plaintiff seeks to recover the value of tools that he claims were in his truck. Plaintiff is a self-employed handyman and the tools that he claims were in the truck are tools he uses in his line of work. Defendant did not know that Plaintiff had left tools in the truck. Further, Defendant testified that the truck was an open bed truck and that when he looked in the truck, no tools were visible. At trial, Defendant argued that it did not make sense for Plaintiff to leave tools he used for work in a truck that needed repairs.

During cross-examination, Defendant asked Plaintiff whether the truck had been paid in full or if it had been repossessed. Plaintiff denied that the truck had been repossessed and testified that he paid for the truck in cash. Defendant did not present any evidence that the truck was repossessed.

Defendant argues that he is not liable for the theft of Plaintiff's truck because the parking

lot where the truck was parked is an open access parking lot that is shared with four other shops. Further, Defendant claimed that there was no way for him to secure Plaintiff's vehicle as he had nowhere to lock it. Defendant's shop has been at its current location for thirteen years and he has never had problems with vehicle thefts.

At trial, Plaintiff stated he sought relief in the amount of $15,000: $8,500 for his truck and $8,500 for his tools. However, the list that Plaintiff introduced at trial listed the value of the tools as $4,729.35. Additionally, the Complaint stated that the relief sought was $8,500 total. Aside from the list of tools, Plaintiff did not introduce any evidence of the value of the tools. Plaintiff testified he did not have any receipts for his tools and that he came up with the value based on his recollection and by checking Lowe's.

Plaintiff did not introduce any evidence of the value of his truck. Plaintiff testified he did not check Kelley Blue Book to determine the truck's value. He determined the value of the truck based on its age and how many miles it had. When asked by the Court how much he believed the truck was worth, Defendant testified that he estimated the truck was worth between $3,700 and $5,700. Defendant admitted that he did not get a chance to inspect the truck, but testified his estimate was based on Plaintiff's statement that the truck needed a new clutch.

As of the date of trial, Plaintiff's truck has not been recovered. Although Defendant disputes whether the truck was truly stolen, Defendant did not present evidence proving otherwise.

DISCUSSION

In civil claims, the party asserting the claim bears the burden of proving each and every element of the claim by a preponderance of the evidence.[2] The side on which the greater weight

[2] *Sullo v. Kousournas*, 2010 WL 718666, at *6 (Del. Super. Feb. 3, 2010).

of the evidence is found is the side on which the preponderance of the evidence lies.[3] If the evidence is in even balance, then the party bearing the burden of proving a fact by a preponderance of the evidence has failed to satisfy that burden.[4]

1. Bailment of the Truck

Plaintiff seeks recovery on the basis of negligence, arguing Defendant breached his duty to Plaintiff by failing to safeguard Plaintiff's truck. Based on the testimony of the parties, Plaintiff gave his truck to Defendant for Defendant to inspect it and determine what repairs needed to be done on the truck. Thus, Plaintiff's claim is better categorized as a bailment.

A bailment is defined as the "delivery of personal property by one person, the bailor, to another, the bailee, who holds the property for a certain purpose...."[5] A bailment occurs only if the bailor transfers possession and control to the bailee.[6] When a bailee receives goods under a bailment, the bailee owes a duty "to exercise reasonable care with respect to the property under the terms of the bailment."[7] The bailee's required degree of care is that which is "reasonably necessary to prevent loss or damage to the property."[8]

Here, the facts show that Plaintiff gave his truck to Defendant for a particular purpose: for Defendant to inspect it and to tell Plaintiff what repairs the truck needed. Further, Plaintiff parked

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[3] *Reynolds v. Reynolds*, 237 A.2d 708, 711 (Del. 1967).

[4] *Fletcher v. Shahan*, 2002 WL 499883, at *3 (Del. Super. Mar. 6, 2002).

[5] *Devincentis v. European Performance, Inc.*, 2012 WL 1646347, at *4 (Del. Super. Apr. 17, 2012).

[6] *Beattie v. Beattie*, 786 A.2d 549, 555 (Del. Super. 2001).

[7] *Harford Mut. Ins. Co. v. Precision Auto Body, Inc.*, 2001 WL 34075400, at *1 (Del. Com. Pl. Oct. 26, 2001).

[8] *Id.*

the truck in the parking lot by Defendant's shop and gave Defendant the keys, which Defendant accepted. By leaving the truck with Defendant and giving him the keys, Plaintiff surrendered both possession and control of the truck to Defendant. Thus, a bailment relationship was established between the parties. The question then becomes whether Defendant breached the standard of care.

When a bailee returns the bailed property damaged, or fails to return it, the bailor can either sue in tort for damages caused by the bailee's negligence, or sue for breach of the bailment contract.[9] When suing for negligence, the general rule is that proof of delivery of goods to the bailee and the bailee's failure to return them, make out a prima facie case.[10] The burden of proof then shifts to the bailee to present evidence rebutting the presumption of negligence.[11]

It is not enough for the bailee to argue that the bailed property was stolen. The bailee must also establish that the theft was not caused by his negligent acts or omissions.[12] The bailee's duty of care begins when the property is delivered to the bailee and continues until the purpose of the bailment has been fulfilled.[13] If the bailed property is stolen, the bailee must show that "it had exercised ordinary care to safeguard the [property] from being stolen."[14]

Plaintiff is suing Defendant for negligence in failing to safeguard Plaintiff's truck. As such, when the truck was stolen and Defendant failed to return the property to Plaintiff, there was

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[9] *Celanese Corp. of Am. v. Mayor and Council of Wilmington*, 78 A.2d 249, 250 (Del. Super. 1950).

[10] *Catalfano v. Higgins*, 191 A.2d 330, 332 (Del. Super. 1963).

[11] *Id.*

[12] *Id.*

[13] *Id.* (citing to *Loeb v. Whitton*, 49 S.E.2d 785 (Ga. Ct. App. 1948)).

[14] *Id.*

a presumption that Defendant acted negligently. The burden then shifted to Defendant for him to show that he met the standard of care and had not been negligent. Defendant did not present any evidence to rebut the presumption that he was negligent. Rather, Defendant's argument was that he was not liable because the parking lot was a shared, open access parking lot and that there was no way for him to protect the truck. Further, Defendant argued he has been at the shop's current location for thirteen years and he has never had any issues with vehicle thefts.

Defendant did not move Plaintiff's truck to a location where he could keep it safe, nor did he take any steps to ensure Plaintiff's truck was safe. Defendant did not provide any evidence that he exercised ordinary care in safeguarding Plaintiff's truck. As such, Defendant has not rebutted the presumption of negligence.

2. Tools

In addition to the value of the truck, Plaintiff seeks to recover the value of the tools that he claims were in his truck. The issue of whether Defendant is liable for the theft of Plaintiff's tools turns on whether Defendant had notice, actual or constructive, of the presence of the tools.[15] Defendant testified that he had no actual notice of the presence of the tools in the truck. Plaintiff did not present any evidence refuting Defendant's claim that he had no actual notice that the tools were in the truck. Thus, the Court finds that Defendant had no actual notice of the tools' presence in the truck.

The issue then becomes whether Defendant had constructive notice of the tools' presence in the truck. Constructive notice can be established by showing the property was in plain view, such that it would have been visible to others.[16] Constructive notice can also be established if "the

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[15] *See Allen v. Houserman*, 250 A.2d 389, 390 (Del. Super. 1969).

[16] *Id.*

property is such that its presence would normally be anticipated."[17]

Defendant testified that when he looked at the truck after Plaintiff dropped it off, he did not see any tools. Plaintiff did not testify that the tools' presence was visible in the truck. Additionally, Defendant testified that it did not make sense for Plaintiff to leave tools he uses for work in a truck that needed to be repaired. As such, Defendant did not anticipate that there would be tools in the truck. The Court finds that Defendant did not have either actual or constructive notice of the presence of the tools in the truck. For this reason, Defendant is not liable for the theft of the tools and Plaintiff cannot recover the value of the tools from Defendant.[18]

3. Damages

A plaintiff must establish damages by a preponderance of the evidence.[19] Plaintiff seeks to recover $8,500 for his truck. However, Plaintiff did not present any evidence establishing the value of the truck. Plaintiff admitted that he did not do any research to determine the value of his truck, nor did he consult Kelley Blue Book to determine what the truck's value was prior to being stolen.

Plaintiff testified that he determined the value of the truck based on the truck's age and mileage. However, Plaintiff's determination of the value of the truck is not credible. In his Complaint, Plaintiff initially stated that he sought a total of $8,500 for the value of the truck and

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[17] *Id.*

[18] Plaintiff's "proof" of the value of the tools was a handwritten list with values listed next to each item. Plaintiff was not able to provide proof of purchase, ownership or any other evidence to substantiate the existence and value of the tools.

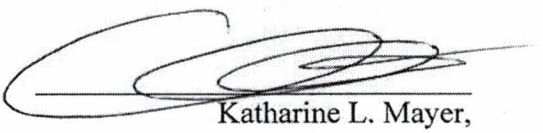
[19] *See Nat'l Grange Mut. Ins. Co. v. Larry Andell's Garage*, 1986 WL 716903, at *2 (Del. Com. Pl. Dec. 10, 1986). *See also Kamrath v. Bold*, 1999 WL 1847359, at *6 (Del. Com. Pl. June 23, 1999).

the tools.[20] Further, Defendant challenges Plaintiff's estimate that the truck was worth $8,500 at the time it was stolen as too high, given that the truck was a 1995 Ford truck that needed a new clutch. Reliable evidence was not presented by Plaintiff regarding the value of the truck. Plaintiff bears the burden of establishing the value of the truck by a preponderance of the evidence. Here, the Court has no basis on which to award damages to Plaintiff. Accordingly, the Court lacks a sufficient basis to grant the relief requested and no damages will be awarded.

CONCLUSION

For the foregoing reasons, judgment is entered in favor of Plaintiff and $0.00 is awarded in damages. Each party shall bear his own costs.

IT IS SO ORDERED.



Katharine L. Mayer,
Judge

[20] As noted herein, Plaintiff's Exhibit purportedly establishing the value of the tools estimated a total of $4,729.35, which was again inconsistent with the record.